

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ALLAN A. PETERSEN,

Plaintiff,

v.

**Civil Action No. 3:06cv114
(Judge Bailey)**

**ANDURAY WHITE, V. FERNANDEZ, L.
LEESON, RODNEY BUCKLEW, D. YOST,
SUSAN S. MCCLINTOCK, DOMINIC A.
GUTIERREZ, B. CALLAHAN, OFFICER
KOVSEK, R. TRYBUS, WILLIAM LAYHUE,**

Defendants.

ORDER DENYING MOTION FOR ORDER OF CONTEMPT

The *pro se* plaintiff initiated this civil rights action on October 27, 2006. In the complaint, the plaintiff asserts that the defendants unlawfully censored and tampered with his legal and special mail correspondence. On January 12, 2007, the plaintiff filed a motion for an order of contempt, in which he requested an order of contempt be placed upon the defendants for mishandling his mail.

On March 14, 2007, the plaintiff filed a second motion requesting the Court enter an order of contempt against the defendants.

On June 5, 2007, the undersigned denied the plaintiff's first motion for an order of contempt as premature. In so finding, the undersigned stated that in order to issue an order of contempt against the defendants, the Court would necessarily have to find that the actions of the defendants were contemptuous or illegal. However, because the issue raised in the petitioner's motion was the same issue at the heart of the plaintiff's complaint, the undersigned found that the case must be processed through the ordinary course before deciding whether there was any basis for the plaintiff's

claims of contempt. Thus, contemporaneous to that Order, the Court issued an Order to Answer to the defendants.

On October 18, 2007, the defendants filed a Motion to Dismiss or For Summary Judgment, which is currently pending before the Court. On October 31, 2007, the Court issued a Roseboro Notice advising the plaintiff of his right to respond to the defendants' motion within 30 days. As of the date of this Order, the plaintiff has not yet filed his reply, nor has the time for doing so expired. Accordingly, the plaintiff's second motion for an order of contempt is premature for the same reasons as his first motion.

In addition, the Court notes that since the initiation of this case, and since the filing of his second motion for an order of contempt, the plaintiff has since been transferred to a different facility. See dkt. 35. Therefore, it appears the issue of any further mail tampering by the defendants has become moot. Accordingly, the plaintiff's second Motion for an Order of Contempt (dkt. 27) is **DENIED**.

IT IS SO ORDERED.

The Clerk is directed to mail a copy of this Order to the *pro se* petitioner and to transmit a copy to counsel of record via electronic means.

DATED: November 30, 2007.

/s John S. Kaull

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE